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In re Application of
KAYAKIRI, Hiroshi *et al*
Application No.: 09/869,135
PCT No.: PCT/JP99/07160
Int. Filing Date: 20 December 1999
Priority Date: 24 December 1998
Attorney Docket No.: 21229US0PCT
For: IMIDAZOLE COMPOUNDS AND
MEDICAL USES THEREOF

DECISION

This decision is in response to the declaration filed on 09 October 2001 which is treated as a submission under 37 CFR 1.42.

BACKGROUND

On 08 August 2001, a Notification of Missing Requirements was mailed indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) was required. A two-month time limit was set for response with extensions of time available pursuant to 37 CFR 1.136(a).

On 09 October 2001, applicants filed a declaration signed by nine of the ten listed co-inventors and by three heirs of deceased co-inventor Teruo Oku.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Applicants have furnished a declaration signed by Noriko Oku, Chikako Oku and Tomohito Oku as heirs of Teruo Oku who is deceased. However, this declaration does not meet all the requirements of 37 CFR 1.497(a) and (b).

37 CFR 1.497(a)(3) requires that the citizenship of each inventor (including any deceased inventor) must be listed on the declaration. 37 CFR 1.497(b)(2) also requires that the citizenship, residence, and last mailing addresses of the legal representative (or

heirs) be recorded on the declaration.

Here, there is no indication whether the post office addresses, residences, and citizenship recorded on the declaration is that of the heirs or the deceased co-inventor. This information is the same in each box signed by the heirs. Regardless, not all of the requirements of 37 CFR 1.497 listed above has been satisfied.

It is also not clear whether all of the heirs have signed the declaration. A statement from the heirs or counsel should be submitted setting forth that they are all of the heirs of Teruo Oku and indicating whether a legal representative has been appointed or is required by the applicable law to be appointed is required.

Finally, it appears that the declaration may have been amended after the heirs signed the declaration because of three English language statements in the Japanese language side of the declaration next to the signatures of the heirs. The English language statements that the "[s]iganture was written by his . . . " suggests that these statements were written after the heirs signed the declaration. The wording of an oath or declaration cannot be amended, altered or changed in any manner after it has been signed. See § 602.01 MPEP.

CONCLUSION

For the reason discussed above, applicants' petition under 37 CFR 1.42 is **DISMISSED** without prejudice.

Applicants are required to provide an oath or declaration in compliance with 37 CFR 1.497(a) and (b) within a time limit of **TWO (2) MONTHS** from the mail date of this decision. Extension of time may be granted under 37 CFR 1.136.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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